

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re REFCO INC. SECURITIES LITIGATION : Case No. 07-md-1902 (JSR)
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SPECIAL MASTER ORDER ON DISCOVERY DISPUTES

SPECIAL MASTER RONALD HEDGES, for good cause shown, hereby orders as follows:

1. The trial date for Thomas H. Lee Equity Fund V, L.P. v. Grant Thornton LLP (07-cv-8663 (JSR)) has been set for March 14, 2011.
2. The re-opened fact deposition of THL witness Max Strasburg is now scheduled for October 15, 2010 in Detroit, Michigan.
3. The Suffolk Trustee is to advise defendants Kavanagh and Owens of the costs of reproduction of the following documents within 10 days of entry of this Order:
 - All subpoenas served by the Suffolk Trustee in connection with the above-captioned action, and any constituent cases;
 - All responses, objections and productions in response to such subpoenas, including but not limited to, responses from the Bank of New York Mellon, UBS, and Eilenberg and Krause; and
 - SUFF 00001 - SUFF 003323, along with any objections served in conjunction with that production.

If there is a dispute concerning the costs of reproduction, defendants Kavanagh and Owens are to arrange a conference call.

4. The Suffolk Trustee shall make one production to defendants Kavanagh and Owens within 30 days of entry of this Order. These defendants shall make copies of the documents available to other parties on request. Costs of duplication are to be agreed on by the parties or brought to my attention by conference call.

5. My statement of reasons for the orders set forth in items (3) and (4) above is as follows:

The Suffolk Trustee argues that he is a nonparty to the civil action in which the documents have been sought. The Suffolk Trustee is, however, a party to the MDL proceeding. As such, I consider it within my discretion to order the Trustee to “share” information with other parties to that proceeding. This is plainly contemplated by the *Manual for Complex Litigation (Fourth)* as well as the scheduling order executed by Judge Lynch before my appointment.

The Suffolk Trustee has also raised the specter of undue expense or burden, although he has never quantified anything. In any event, the documents sought are plainly discoverable under Rule 26(b)(1). I fail to see how the Suffolk Trustee can plausibly argue any cost or burden, as defendants Kavanagh and Owens have agreed to bear his reasonable reproduction costs. Moreover, to avoid any further costs to the Suffolk Trustee, I directed that the form of order reflect that he need make only one production.

Finally, the Suffolk Trustee argues that I should await the disposition of a pending Report and Recommendation. However, there is no reason to do so. First, the document request is pending. Second, even were the Report and Recommendation to be adopted and the Suffolk Trustee’s pleading dismissed, the Court would continue to exercise ancillary jurisdiction over him. Third, and most telling, were I to await a possible dismissal and the Court were not to continue to exercise jurisdiction, defendants Kavanagh and Owens would simply subpoena the documents – and we would be where we are now.

The Suffolk Trustee and his attorneys are on notice that the documents are being sought. I assume that they will take appropriate steps to preserve.

Finally, so that the record is perfectly clear, I will not stay this order.

6. With respect to any ongoing discovery or current discovery in which there is a dispute or potential dispute about which the parties informed Special Master Hedges as of September 15, 2010, the parties are directed to resolve the dispute no later than October 29, 2010, or otherwise present the dispute on October 29, 2010, to Special Master Hedges in the form of a joint submission.

SO ORDERED this 20th day of Sept, 2010



HON. RONALD HEDGES
SPECIAL MASTER